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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,251	12/09/2003	Thomas E. Pride	MAC 426-15	3351

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EXAMINER

QUINN, COLLEEN M

ART UNIT	PAPER NUMBER
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3634

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/730,251	Applicant(s) PRIDE, THOMAS E.	
	Examiner COLLEEN M. QUINN	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

The request filed on 3/13/2008 for a Request for Continuing Examination (RCE) under 37 CFR 1.114 is acceptable and an RCE has been established. Any previous finality is hereby withdrawn and a new action on the merits follows. Any newly-submitted claims have been added. An action on the RCE follows.

Claim Clarification

1. It is not clear if applicant is invoking 35 USC 112 paragraph 6. Examiner notes from Chapter 2100 of the current MPEP, section 2181:

A claim limitation will be interpreted to invoke 35 U.S.C. 112, sixth paragraph if it meets the following 3-prong analysis:

- (A) the claim limitations must use the phrase "means for" or "step for";*
- (B) the "means for" or "step for" must be modified by functional language; and*
- (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material or acts for achieving the specified function.*

Currently it appears the applicant's "actuation means...for opening and closing said clamping mechanism" and "seating means...for supporting the panels" meet the three-prong analysis. However, the applicant has never invoked, argued, or made clear that the applicant intends to invoke 35 USC 112 paragraph 6, and so the examiner understands that 35 USC 112 paragraph 6 is not being invoked the applicant. If the applicant does intend to invoke 35 U.S.C. 112, sixth paragraph the applicant must clearly state on the record that 35 U.S.C. 112, sixth paragraph is being invoked.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-8 and 16-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Volkert et al. (US 6,588,605). Volkert et al disclose frames (23, 25), a plurality of clamping mechanisms (40,44 & Figure 1), spaced apart along the frame and generally oriented perpendicular to their direction of spacing (Figure 1), being independently biased towards a closed position, via spring (Specification, column 8, lines 4-14), actuation means (234,236,238,266) operable with the clamping mechanisms for opening and closing the clamping mechanisms (Abstract), the clamping mechanisms being individually self adjusting upon closing (Specification, column 6, lines 26-40).

Regarding claims 2-8, the clamping mechanisms comprise relatively movable jaws (40A-C, 44), operated by the actuation means to overcome the closed position, levers (246A-C, 250, 262, 334,336, 338), connected to the jaws (via 255), the actuation means operable by separate levers (to open and close the jaws (Abstract), the levers having a distal end (as in end 259B labeled on middle lever, unlabeled on other levers), the ends of the lever moved relatively towards one another by actuation means, causing jaws to open (col. 7, lines 54-67 - col. 8, lines 1-9; col.9, lines 65-67), the actuating means comprising camming means (244A-C), and control means (250, 262), the distal ends of the levers extending through the frame (Figure 6B, Figure 10),

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engaging the camming means (Figure 6B, Figure 10), operable by the control means (col. 7, line 64, col. 9, lines 65-67), causing the pairs of jaws in the sets of clamping mechanisms to open and close in unison (Abstract). The control means comprising a rotatable shaft (242), in the direction of the spacing of the clamping mechanisms (Figures 1 & 7), the camming means comprising a plurality of cam wheels disposed on and fixed to rotate with the rotatable shaft (Figure 8), the cam wheels having radial sides, forming cam surfaces, varying in the axial direction, with the revolution of the wheel (Figures 6D & 9), the cams being disposed adjacent the distal ends of the levers (Figures 6b & 8), wherein, the rotating of the shaft either brings the distal ends nearer or further apart, resulting in the opening or closing of the jaws (Specification, column 7, lines 54-67 - column 8, lines 1-57) and the cam surfaces being generally planar (Figures 8 & 9).

Regarding claims 16-20, Volkert et al. disclose a transportation/shipping package comprising one or more clamping cartridges, as set forth in claim 1, used to clamp, space, separate and support one or more panel-type articles (as advanced above), further comprising seating means (50) which cooperate with the clamping mechanisms to support the panel-type articles (Figures 2 & 4), the clamping cartridges provided in pairs (Figure 2), the pairs being oriented generally perpendicular to each other, for clamping adjacent perpendicular edges of articles (Figures 1-2), the clamping mechanism pairs aligning in the same panes as each other (Figure 2), and disposed at an angle to the transportation/shipping package (Figure 4).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 16-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2 and 16-21 of U.S. Patent No. 7,249,682. Although the inventor of the US Patent is different than the inventor of the current application, both the US Patent and the current application share a common assignee, 1546300 Ontario Limited.

Although the conflicting claims are not identical, they are not patentably distinct from each other because US Patent No. 7,249,682 discloses all the elements and structural orientation of the current application, including, but not limited to a plurality of spaced apart clamps comprising jaws, actuation means for opening and closing the jaws which are normally biased to a closed position, a transportation and shipping

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package comprising one or more clamping cartridges, seating means wherein the clamping mechanisms are arranged in certain a perpendicular relation to each other, the articles carried and the shipping package. Although the patent does not specifically claim a frame, as the current application does, one of ordinary skill in the art would understand that a frame would be a very obvious addition to such a cartridge assembly and for such a transportation or shipping package.

Response to Arguments

Applicant's arguments with respect to the prior art of Volkert et al. have been considered but are not found to be persuasive. Applicant argues that Volkert et al. fail to teach clamping mechanisms that are independently controlled. This is not found to be persuasive as the prior art clearly demonstrates two independent control handles (250, 262), one for each set of clamping cartridges. Moving lever control handle 250 will only operate the upright clamping jaws on the vertical wall of the frame, and operating control handle 262 will only open or close the clamping jaws on the horizontal part of the frame, thereby independently controlling the different clamping mechanisms, but each control handle opens and closes the jaws of their respective clamping mechanisms in unison.

Applicant also argues that Volkert et al. fail to teach each clamping mechanism being normally biased toward a closed position independent of other clamping mechanisms and that the actuation means are operable on the jaws against closing

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biases for opening and closing the clamping mechanism in unison. Again, this is not found to be persuasive and the examiner would like to point out that the prior art clearly demonstrates two independent actuation means (250, 262), one for each set of clamping cartridges, and each clamping cartridge having a plurality of pairs of jaws (figure 1) and each actuation means controls only its own clamping mechanism, independent of the other clamping mechanism (as advanced above) and that each actuation means moves the pairs of jaws within their respective clamping mechanisms in unison. Moving lever control handle 250 will only operate the upright clamping jaws on the vertical wall of the frame, and operating control handle 262 will only open or close the clamping jaws on the horizontal part of the frame, thereby independently controlling the different clamping mechanisms, but each control handle opens and closes the jaws of their respective clamping mechanisms in unison.

Applicant's arguments with respect to the prior art of Leventy are moot as that rejection has been withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLLEEN M. QUINN whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHERINE W MITCHELL/
Supervisory Patent Examiner, Art Unit 3634

/C. M. Q./
Examiner, Art Unit 3634